IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1142 of 2002

in

SPECIAL CIVIL APPLICATION No 6990 of 2002

For Approval and Signature:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B V PATEL AND ORS
Versus
GUJARAT WATER SUPPLIES & SEWERAGE BOARD AND ORS

Appearance:

LETTERS PATENT APPEAL No. 1142 of 2002

TANNA ASSOCIATES for the Appellants
MR JR NANAVATI with MR HS MUNSHAW and
MR DILIP B RANA for Respondent No. 1
MR MS RAO, ASSTT GOVT PLEADER
for Respondent No. 2
MR HJ NANAVATI for Respondent No. 3

NOTICE SERVED BY DS for Respondent No. 4

CORAM : HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE J.N.BHATT

Date of decision: 10/03/2004

C.A.V. JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.N.BHATT)

1. Could a surplus Employee, or a Deputationist claim Absorption or Permanency in the same cadre, instead of fresh appointment, in other organisation, on account of Government decision to close down the Corporation or the Board or the Government-Undertaking or abolition of posts, pursuant to the policy-decision of the Government, is the sole question which has come to the fore in this Letters Patent Appeal, under Clause-15 of the Letters Patent, challenging the judgment of the learned Single Judge rendered, on 05-12-2002, in a writ petition being Special Civil Application, No. 6990 of 2002, filed by invocation of Article 226 of the Constitution of India.

2. Let us first, shortly, but, intimately, look into the relevant and material factual profile giving rise to the aforesaid controversy, so as to effectively and efficaciously probe, examine and adjudicate the said sole question in focus.

3. The appellants are the original-Petitioners, ("Petitioners", for short) whereas, Respondent Nos.1 to 4 are the original-opponents. Petitioners initiated legal battle by filing the writ petition by invocation of the provisions of Article 226 of the Constitution of India on the premise, that they are entitled to be absorbed only in the same cadre on the post of Deputy Executive Engineer pursuant to the decision, dated 21-05-2002 by quashing the impugned, Order No.Est-3/2002/EC-1/6746, dated 20-07-2002. The writ petition came to be strongly opposed, and upon consideration of the facts and the circumstances, the relevant policy decision of the Government, the Board and the Corporation and the material proposition of the relevant law, the learned Single Judge dismissed the petition, `inter-alia' holding that the challenge against the impugned, order, dated 20-07-2002, is unjustified and further holding that the petitioners are not entitled, as of right, to claim appointment or absorption to the higher post i.e. in the

same cadre of Deputy Executive Engineer held by them earlier in Parent Department except the protection of last pay, pursuant to the decision of the Government for closure of the establishment of respondent No.3-Corporation, in view of the policy of the Government emanated in and from Circular No.JNV/1097/413/A, dated 27-11-1997, issued by the Finance Department, Government of Gujarat and acceptance of the terms and conditions, as well as, Undertakings filed and given to the Government.

4. The Petitioners were originally working with respondent No.3, Gujarat State Construction Corporation Limited ("Corporation", for short), initially, as Assistant Engineer and then as Deputy Executive Engineer and upon decision of the Government, the said loss incuring Corporation, having been in process of winding up, they were placed on the common Surplus List since the petitioners did not opt for Voluntary Retirement Scheme (V.R.S.) out of two available options. The petitioners came to be accommodated, being on Surplus List, on temporary appointment, on Deputation, as Assistant Engineer or Additional Assistant Engineer; respondent No. 1 is the Gujarat Water Supplies & Sewerage Board ("Board", for short); whereas, respondent No.2 is the State of Gujarat, and, respondent No.4 is Public Health Assistant Engineering (Civil) Association.

5. The Petitioners' case has been that they had opted against the Voluntary Retirement Scheme and in favour of placement of their names in the Surplus List. As they were working, as Deputy Executive Engineer, for a period ranging from 4 to 10 years with their parent department i.e. respondent No.3-Corporation and, also, worked, thereafter, on higher post, as Deputy Executive Engineer with respondent No.1-Board, calling upon them to opt for permanent vacant lower posts, as Assistant Engineer or Additional Assistant Engineer, is unjust, unreasonable, discriminatory, unequal, illegal and Unconstitutional.

6. The respondent-authorities opposed all pleas and claims raised in the petition, `inter-alia' contending that the petitioners have no right for absorption in the service of the Board. It is, also, contended that the State Government has decided to close down the Corporation on account of loss making Undertaking in the larger public interest. Further, the question of accommodation of surplus and extra staff, pursuant to the impugned circular for accommodating the employees of such Corporation, would be required to be dealt with and in accordance with the terms and conditions in the said

circular agreed by them and followed by their unqualified Undertakings in favour of Respondent No.1-Board.

7. Pending such decision, the original-petitioners came to be allotted to respondent No.1-Board on deputation from the Common Surplus-Cell or Pool of Government. The petitioners were serving in the Corporation, as Deputy Executive Engineers. On petitioners having been rendered "Surplus" by virtue of Order, dated 30-09-1998, they came to be allotted to the Board, on Deputation, as Deputy Executive Engineer on then vacant posts, initially, for a period of one year from the said Surplus-Cell of the Government and then extended from time to time. During this period, the respondent No.1-Board sent a communication dated, 20-07-2002, calling upon the original-petitioners, as to whether they would agree to be absorbed in the service of the Board, on the post of Assistant Engineeer / Additional Executive Engineer, as fresh appointees or not with protection of pay of Deputy Executive Engineer? That communication ignited the minds of the petitioners and it led to the filing of the writ petition, despite the earlier agreed terms and undertakings given by them and contrary and against the policy decision and impugned circular of the State Government.

8. We have been addressed by the Counsels, at a marathon length and we have, dispassionately, heard their submissions. We have, also, scanned through important and relevant testimonial and documentary evidencery material. We are, also, taken through the relevant propositions of law and the records of the earlier writ petition being Special Civil Application No. 8640 of 1998 initiated by Respondent No.4-Federation of Engineering Services Association against respondent No.1-Board. We are, also, informed that except five petitioners of the erstwhile staff of the Corporation, all have taken and accepted either alternative benefits or opted for Voluntary Retirement Scheme or accepted appointments as fresh Assistant Engineer or Additional Assistant Engineer, in the said Board. It is, also, further reported in the course of hearing that during the pendency of the Letters Patent Appeal, some of the original petitioners have, also, accepted one of the other alternatives. This controversy, thus, has shrunk down to a very short cirumference and very narrow dimension, though the Counsels have raised submissions for a number of hours, at a greater length.

9. Respondent No.1, Gujarat Water Supplies and Sewerage Board, is constituted, pursuant to Gujarat Act

No. 18 of 1979 i.e. Gujarat Water Supplies and Sewerage Board Act, 1978. It has its own regulations and Recruitment Rules. Respondent No.1 is having its own Engineering Staff belonging to different cadres and main activities and functions of the respondent No.1-Board are to make, arrange and provide water supply and sewerage projects. The Board has, also, various cadres like Assistant Engineer, Additional Assistant Engineer and Oversear at a lower technical level and there are Recruitment Rules for the said cadres, and promotions to the higher posts of Deputy Executive Engineers are given on the basis of seniority-cum-merit. We have, dispassionately, examined the Recruitment Rules of the Board, as well as, the Corporation. The Engineering employees working in different technical cadres are, therefore, to be given promotion as per the rules and regulations of the Board.

10. The petitioners were initially recruited with the respondent No.3-Corporation known as the Gujarat State Construction Corporation Limited, which was incorporated as a company under the Companies Act, 1956 and there is no dispute about the fact that it is a Government Company. The petitioners had been promoted to the post of Deputy Executive Engineer with respondent No.3-Corporation between the period from 1988 to 1994.

11. Respondent No.3-Corporation was incurring heavy losses and, therefore, a policy decision was taken to close down the Corporation and to give an option to the employees of the Corporation to either retire voluntarily with the benefits accrued therewith or to submit their option to be on Surplus List of Surplus-Cell to be absorbed with the State Government or the Board or the Corporation functioning under control of the State Government with benefit of last pay protection. The State Government in Finance Department had, also, provided a comprehensive scheme, whereby, such surplus employees of such Boards or Corporations, which have been closed down, were to be absorbed in the State Government's various Boards and Corporations functioning under the State Government control.

12. The petitioners were sent on deputation to respondent No.1-Board for a period of one year by an Order, dated 30-09-1998, and petitioners are out of 11 officers who had agreed to the terms and conditions and given an undertaking to go on deputation for a period of one year. It is pertinent to mention that the petitioners were accepted on deputation in lieu of government directives dated 25-06-1998 issued by the

Finance Department. The period of deputation came to be extended from time to time. Respondent No.4-Federation of the Engineers Association, by filing Special Civil Application No. 8640 of 1999, challenged the scheme and policy pursuant to the Circular dated 27-11-1997, unsuccessfully and, also, lost in the Letters Patent Appeal.

13. It is very clear that the petitioners, who are the officers of respondent No.3-Corporation, continued on deputation with respondent No.1 by way of temporary arrangement. Petitioners, who were deputationists with respondent No.1 -Board, obviously, continued to remain as officers of respondent No.3-Corporation by way of temporary arrangement to accommodate them upon decision to close down respondent No.3-Corporation, or at the best, they remained and continued as Surplus-Cell components and cannot have permanency rights and that to in the same cadre as that of parent organisation or Department.

14. It is noticed from he record that Minutes of the Meeting held on 21-05-2002 by the Secretary to the Water Supply Department of the State of Gujarat, the respondent No.1-Board was not party to that meeting and Board was not aware about such a consideration in the meeting. Even otherwise, also, it is quite explicit from the said minutes that the petitioners' case has to be considered as per the Circular dated 27-11-1997. The Minutes do not show that it was resolved that the petitioners be absorbed by the respondent No.1-Board as Deputy Executive Engineer permanently. At the best, in a Meeting held on 21-05-2002 where Secretary to the Water Supply Department to the State of Gujarat remained present, the question of absorption of the petitioners in the cadre of Deputy Executive Engineer was discussed and considered. It cannot be said that it was so decided and even if it is so in absence of respondent No.1-Board in the said Meeting and without its concurrence, the discussions and considerations of such an issue in the Meeting cannot be thrusted on respondent No.1-Board. Again, it is, also, material to note that the petitioners were employed initially by respondent No.3-Corporation in the cadre of Assistant Engineer or Additional Assistant Engineer, and, therefore, they cannot claim appointment or absorption on the post meant for Direct Recruitment as they are promotees of the concerned parent department. Again, as per the eligibility and qualifying criteria for Direct Recruitment in the cadre of Deputy Executive Engineer in the organisation and establishment of respondent No.1-Board, as prescribed in the Recruitment Rules, the

petitioners are not eligible.

15. It may, also, be interesting to note and highlight that respondent No.1-Board is a statutory legal entity and its administrative department in the Government is Narmada Water Resources and Supply Department of Government of Gujarat, which is not a respondent-party in this petition.

16. In exercise of powers conferred under Section 2 of the Gujarat Water Supply and Sewerage Board Act, 1978, the respondent No.1-Board, with the approval of the Government has made the regulations for appointment to the post of Deputy Executive Engineer (Civil) in the Public Health Engineering Service (Class-II) and in the service of the Gujarat Water Supply and Sewerage Board. The regulations are called and known as "Recruitment Regulations" for recruitment of Deputy Executive Engineer (Civil) in Public Health Engineering Services (Class-II) in the office of Gujarat Water Supply and Sewerage Board. The petitioners are not eligible for appointment by direct selection to the post of Deputy Executive Engineer in terms of Rule 2 (b) of the said regulations.

17. The status of the petitioners, insofar as respondent No.1-Board establishment is concerned, is that of a deputationist, who came to be allotted from the surplus Central Pool under the Finance Department of the State of Gujarat. By virtue of Office Order dated 25-06-1998 of respondent No.1, as per the instructions contained in the letter of Finance Department, 11 Deputy Executive Engineers of respondent No.3-Corporation had been ordered to be appointed on deputation basis in respondent No.1-Board for a period of one year on the said post and place mentioned against their names in the Order, dated 30-09-1998. They have been taken or absorbed on deputation basis and, therefore, they were not entitled to get Deputation Allowance and again, their lien with respondent No.3-Corporation came to be extended from time to time. Therefore, also, the claim of the petitioners for permanent absorption in the cadre of Deputy Executive Engineer cannot be sustained, over and above the terms and conditions of the impugned Circular and categorical Undertakings given by the petitioners.

18. The petitioners, who are deputationists, and working in the respondent No.1-Board from respondent No.3-Corporation, are required to be considered for absorption on the basis of Circular, dated 27-11-1997, issued by the Finance Department of the Government of Gujarat and the letter dated, 11-06-2002, and not the

minutes or memorandum relied on by them and otherwise also, it is not shown as to how and why respondent No.1-Board is bound by it and more so in its absence in the said Meeting and de-hors its Rules.

19. Respondent No.1-Board is obliged and required to consider on the basis of Circular dated 27-11-1997 and pursuant to that, petitioners were addressed a letter dated 20-07-2002, before the extended period of deputation, on 01-08-2002, by respondent No.1-Board inviting their options to be received on or before 31-07-2002, else, they were to be repatriated to the original parent department. It cannot be said that this action, which is impugned by the petitioners, in any way, is contrary to the government policy and directions manifested in the Circular, dated 27-11-1997, as well as, 11-06-2002. It is not derogatory to the said circular. As such, the said action is compatible and in consonance with the policy and the directions contained in the Circular dated 27-11-1997. It is, also, settled law that Deputationist having lien on post of parent cadre, cannot claim permanency or absorption in the same cadre with a Loanee-Board or Corporation or Department.

20. The petitioners, admittedly, have given their separate options claiming the post of Deputy Executive Engineer on the ground that they were already working as Deputy Executive Engineer in respondent No.3 -Corporation. This contention is, rightly, disbelieved by the learned Single Judge and in our opinion, also, petitioners have no right to insist for absorption or permanency in the same cadre while being on deputation with respondent No.1-Board's establishment, more so, when respondent No.1 has its own establishment, different posts and cadres under the Recruitment Rules and regulations. The only right the petitioners can legitimately advance is for pay protection as last drawn before deputation from respondent No.3-Corporation. There are three different cadres, namely, Assistant Engineer, Additional Assistant Engineer and Oversear and the employees working with respondent No.1- Board, who are entitled and eligible for the promotion to the post of Deputy Executive Engineers and the Board has employees in those cadres who are working since more than two three decades without any promotion and their claim for promotion on the basis of Recruitment Rules cannot be denied, overlooked or ignored pursuant to the prevalent and existing rules of respondent No.1-Board. The existing employees of different cadres are eligible for promotion to the higher post of Deputy Executive Engineer. It is found from the Recruitment Rules that

ordinarily, 15 - 16 years period is spent for getting promotion to the post of Deputy Executive Engineer, whereas, the promotional chances on the establishment of the respondent No.3-Corporation are higher and brighter in view of the Recruitment Rules and the number of posts and projects and petitioners are also beneficieries of such situation in Corporation.

21. It will, also, be very pertinent, at this juncture, to mention that on one hand, the petitioners are insisting for being posted and appointed as Deputy Executive Engineer though they are on deputation with respondent No.1-Board from respondent No.3-Corporation. They have categorically admitted in their option forms with terms and conditions therein that except their pay protection, they are willing to be absorbed and appointed on any post by the respondent No.1-Board in accordance with the administrative exigencies. It is in this context there is no any right much less vested as insisted for the post of Deputy Executive Engineer on the establishment of respondent No.1-Board and also as per the policy and the circular of the Government. The claim and insistence of the petitioners for the post of Deputy Executive Engineer on the establishment of respondent No.1-Board, while being on Deputation, is not supportable and recognisable by any other material and, also, the policy, the scheme and the Circular, dated 27-11-1997, of the Government and unequivocal Undertakings.

22. The contention that the petitioners are entitled to be absorbed on the post of Deputy Executive Engineer (Civil) only because the posts are vacant and are to be filled up by direct recruitment, apart from the ban on recruitment imposed by the Government, so far as surplus staff is concerned, appropriate decision is required to be taken by the concerned Board or Department or the State Government and, therefore, the petitioners, who are the employees of respondent No.3-Corporation, started from the cadre of Assistant Engineer or Additional Assistant Engineer cannot claim appointment or absorption on the post meant for open or direct recruitment as they are promotees of the concerned parent department.

23. The Minutes of Meeting dated 21-05-2002 held by the Secretary of the Water Supply Department of the State Government is wrongly relied on by the petitioners. Respondent No.1-Board was not represented and was not aware about the notes made in the said meeting. Again, it is specifically mentioned in the said Minutes of the Meeting dated 21-05-2002 that the petitioners' case shall be considered as per the Circular, dated 27-11-1997. We

do not find even the averment that the petitioners are required to be absorbed by respondent No.1-Board as Deputy Executive Engineer and, therefore, reliance on the said Minutes of this Meeting dated 21-05-2002 is meritless and baseless. Again, the claim for absorption and continuance, as Deputy Executive Engineer in respondent No.1-Board is, also, without any substance as the Recruitment Rules of respondent Nos. 1 to 3 are not identical.

24. As per the office order dated 25-06-1998, the petitioners came to be appointed with respondent No.1-Board from the establishment of respondent No.3 for a period of one year on the post and place mentioned against their names in the order without any deputation allowance, but holding their lien with the respondent No.3-Corporation. Respondent No.4-Association of Public Health Assistant Engineers Association (Civil) has, also, strongly objected the continuance and absorption and claim of petitioners by filing its affidavit-in-reply.

25. The Circular dated 27-11-1997 manifesting the policy and the scheme of the Government is highlighted in the decision taken by the State Government for the implementation of the Public Sector Reconstruction Programme. Some Public Sectors were required to be closed down and the Government had taken a decision to provide certain facilities of services to the employees and officers of the Public Sectors. There shall be two options given to the employees liable to be surplus due to closure of Public Sectors. They shall have to opt for any one option out of these two. One, they shall have to retire by availing of the voluntarily retirement benefit as per the retirement scheme as stated in para-B of the circular, and, second, to give their option to include their names as `surplus candidates' in the list of surplus candidates meant for State Government's Surplus Employees Unit. The concerned persons are required to fill up the prescribed forms for such options as per Schedule I and II. Officers and employees opting for voluntary retirement shall be eligible for Provident Fund, Leave Encashment, Gratuity amount payable as per the rules of the Public Sector. The entire expenses under the Voluntary Retirement Scheme shall be paid from the said Renewal Funds. For this purpose, the concerned Public Sector shall make a proposal to the Government in details. The officers and employees shall be deemed to have retired on the date that may be prescribed by the Public Sector and they shall be determining the period for payment of amount payable under this scheme.

26. The officer or employee who has opted for being declared as surplus from the Public Sector under the Public Sector Reconstruction Programme (PSRP) shall be treated as surplus upon bringing an end to his/her service to his/her original post and the name shall be placed on the list of surplus employees that may be maintained by the surplus unit of the Finance Department so as to give them "NEW APPOINTMENT". Thereafter, in the event of direct recruitment of different officers as mentioned in the scheme, the Surplus Unit shall allocate them the job in any form at any place in the State. The Government shall try its best to provide service to the surplus candidate, but after being declared as surplus, if new appointment could not be given to him/her within a maximum period of one year, or thereafter, on any suitable vacant post, for want of vacancy, then, such candidate on the Surplus List shall have to get retired as per the Voluntary Retirement Scheme as per the above circular.

27. It is, also, clearly manifested and articulated in one of the terms and conditions of the circular that the officer or employee on the Surplus List shall be given new appointment only for the post for which he shall be holding the requisite qualification as per the Recruitment Rules for the said new post. Even by this yardstick, since recruitment requirements and criterion for the post of Deputy Executive Engineer in respondent No.1-Board are different, the claim advanced by the petitioners is unsustainable. It is very clear from the scheme envisaged under the said circular that any officer or an employee on the list of surplus employee unit shall be given appointment on any available vacant post at different place, in any cadre, in any pay-scale, in any part of the State of Gujarat as deemed appropriate and he/she shall have to assume the duty there and have, also, to do so. The appointment, automatically, shall stand cancelled and payment of lumpsum amount shall also become due. There is no doubt about the fact that the last pay of four petitioners is protected and shall remain protected so long as the deputation period or temporary arrangement or even in the surplus status period continues.

28. As it is found that the original-petitioners are the deputationists, insofar as, the establishment of the respondent No.1-Board is concerned and, therefore, they cannot claim as of right the absorption in the same cadre in the establishment of respondent No.1-Board, since they belong to the establishment of respondent No.3-Corporation. A deputationist has no right for

continuation more than the tenure period, much less, right of absorption and this proposition of law is very well settled. There are many pronouncements of the Hon'ble Apex Court on this point. However, we would like to refer one decision rendered in "State of Punjab and Ors. Vs. Inder Singh and Ors.", (1997) 8 SCC 372. It has been clearly propounded that the deputationist is liable to be repatriated to his parent cadre or department on expiry of the period of deputation. Even repatriation from the deputation cannot be resisted by the employee on the ground that he is continued on deputation for a long time during the deputation period. He also cannot claim permanent absorption on deputation post. Similarly, in "Rameshwar Prasad Vs. Managing Director, U.P. Rajkiya Nirman Nigam Limited and Ors.", 1999(5) SLR 203, the Hon'ble Apex Court has held that the deputationist has no right of absorption, unless the rules provide for such absorption. It is also settled proposition of law in the administrative law that power to create continuance and abolish any civil post is inherent in every government or authority and it is a policy decision exercised by the executive service or administrative exigencies on administrative necessity and for the public interest purpose.

29. After having taken into consideration the factual profile and the terms and conditions and the criterion incorporated in the scheme and the policy evolved by virtue of the Circular dated 27-11-1997 and the settled proposition of law, we do not find any infirmity or unreasonableness or perversity in the judgment of the learned Single Judge and, therefore, this Letters Patent Appeal deserves only and only one legal fate of dismissal. Accordingly, this Letters Patent Appeal shall stand dismissed without any order as to costs. This being so, there will be no order in the Civil Application.

(BHAWANI SINGH)
CHIEF JUSTICE

(J.N. BHATT)
JUDGE

The appellants seek stay of this judgment for two months. It is opposed by Counsel for the respondents. However, we allow the request and stay the operation of this judgment for two months.

(BHAWANI SINGH)
CHIEF JUSTICE

(J.N. BHATT)
JUDGE
/shamnath